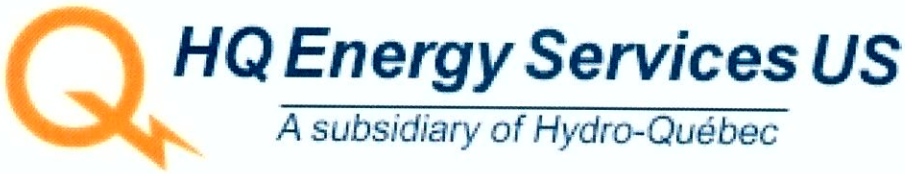

February 9, 2009

BY EMAIL

Courtney Feeley Karp
Commonwealth of Massachusetts
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, Massachusetts 02114

RE: H.Q. Energy Services (US) Inc.'s Written Comments
Regarding Proposed Final Regulations 225 CMR 14.00

Dear Ms. Karp:

H.Q. Energy Services (U.S.) Inc. ("HQUS") respectfully submits the following written comments in response to the Notice Of Public Hearing On Proposed Final Regulations and the associated invitation by the Massachusetts Department of Energy Resources ("DOER") for written comments regarding the DOER's proposed final regulations for the Massachusetts Renewable Portfolio Standard ("RPS") program – Class I, 225 CMR 14.00. HQUS is the US indirect subsidiary of Hydro-Québec Production, the generation division of Hydro-Québec and is headquartered in Hartford, Connecticut. In June 2007, HQUS qualified in the Massachusetts RPS program two 54 MW wind farms that are under contract to Hydro-Québec Production.

HQUS also participates more broadly in the Northeast energy markets. On a daily basis, HQUS is typically delivering approximately 1200-1800 MW per hour into the New England energy market. These deliveries come from Hydro-Québec Production's portfolio consisting of 97% clean hydro generation. HQUS also contributes to the efficiency of the Northeast energy markets by trading between the regions on an hourly basis.

Pursuant to the Green Communities Act, on December 31, 2008, the DOER issued "emergency" regulations, 225 CMR 14.00, entitled Renewable Energy

Portfolio Standard – RPS I (the "Proposed Final Regulations").[1] Those regulations, which were developed through a stakeholder process during the fall of 2008 in which HQUS participated both as a panel participant at the September 23, 2008 public forum and subsequently in written comments, are the proposed final regulations for the RPS Standard for Class I. We further understand that the emergency regulations will remain in place while the DOER receives written comments prior to promulgating the final regulations pursuant to Mass. Gen. L. ch. 30A.

HQUS participated in the public hearing held on February 5, 2009, and this written submission reiterates and expands upon those observations made by HQUS and other hearing participants. HQUS submits the following written comments on the Proposed Final Regulations in order to further demonstrate that certain subsections of the Proposed Final Regulations, §§ 14.05(1)(e) and 14.05(5)(d), continue to be deficient and should be revised prior to promulgation in order to avoid possible vagueness or confusion and address possible inequities between internal and external renewable generation units.

1. 225 CMR § 14.05(1)(e) Should Be Revised To Clarify That The Exclusions Referenced In § 14.05(1)(e)(2) Are Also Applicable To § 14.05(1)(e)(1)

HQUS respectfully submits that the exclusion provisions of §14.05(1)(e)(2) for intermittent Generation Units and "Generation Units for which DOER has received an administratively complete Statement of Qualification Application prior to July 2, 2008" should also apply to § 14.05(1)(e)(1). Pursuant to 225 CMR § 14.05(1)(e), "[t]he Generation Unit's generating capacity is subject to the following obligations:

> 1. The amount of the generation capacity of the Generation Unit whose electrical energy output is claimed as RPS Class I Renewable Generation shall not be committed to any Control Area other than the ISO-NE Control Area unless such Generation Unit has entered into a Capacity Obligation in another Control Area before the start of the first available compliance year for the ISO-NE Forward Capacity Market, in which case this subsection shall apply upon the expiration of that Capacity Obligation.

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[1] A copy of the proposed final regulations is available at http://www.mass.gov/Eoeea/docs/doer/ rps/rps-1-225-cmr-14.pdf.

> 2. The Generation Unit Owner or Operator **of a Non-intermittent Generation Unit** shall commit to the ISO-NE Control Area the amount of the capacity of that Unit claimed as RPS Class I Renewable Generation by submitting by the applicable deadline a show of intent for the ISO-NE Forward Capacity Auction that is the earliest available for the Unit after the Owner or Operator has submitted a Statement of Qualification Application. The Owner or Operator of such unit must also clear the Forward Capacity Auction for which it has qualified, even if it must participate as a price taker. **The requirements of this paragraph do not apply to Generation Units for which DOER has received an administratively complete Statement of Qualification Application prior to July 2, 2008.** (Emphasis added.)

Both paragraphs (1) and (2) seem to implicate Capacity Obligations and the Forward Capacity Market. As both ISO-NE and the DOER have recognized, the distinction between intermittent and non-intermittent resources is especially important when addressing capacity obligations. See Department of Energy Resources, Imports Feasibility Study: Capacity Commitment and Netting Requirement, dated October 31, 2008 (the "DOER Report"),[2] at 6-7 ("ISO-NE has identified, that intermittent resources, for capacity purposes, are different than other generating resources"). In fact, as DOER stated in its report, "intermittent resources are primarily energy, not capacity resources, and there is no discernable reliability or system benefit to requiring them to commit their capacity." The provisions of §§ 14.05(1)(e)(1) and 14.05(1)(e)(2) set out to establish an exclusion from Capacity Obligation for intermittent resources in the Proposed Final Regulations, however, as drafted, do not fully recognize that important distinction. Indeed, the DOER Report expressly provides -- irrespective of any prospective limitation on not committing capacity to another control area or requirement to participate in the Forward Capacity Market and auctions -- that "all generators that have submitted an SQ application prior to July 2, 2008 [are allowed] to maintain their eligibility under the current rules without taking further action." (DOER Report at 8.) In order to harmonize these emergency regulations with the conclusions DOER reached in its Feasibility Study, the exclusion for intermittent resources and the exception for

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[2] A copy of the report is available at http://www.mass.gov/Eoeea/docs/doer/gca/ rps_import/feas-study-report.pdf.

administratively qualified Generation Units applicable in § 14.05(1)(e)(2) should also apply to the obligations set forth in § 14.05(1)(e)(1).[3]

HQUS submits that the source of this apparent confusion is due to the ambiguity created by having to determine whether the phrase "requirements of this paragraph" relates to § 14.05(1)(e)(2) only, or to the entire "Capacity Obligation" provisions of § 14.05(1)(e). Further confusion is presented by the omission of the "Non-intermittent" qualifier to "Generation Unit" in § 14.05(1)(e)(1). To resolve those ambiguities, HQUS respectfully proposes a revised paragraph § 14.05(1)(e)(1) that would read as follows:

> 1. The amount of the generation capacity of **a Non-intermittent** Generation Unit whose electrical energy output is claimed as RPS Class I Renewable Generation shall not be committed to any Control Area other than the ISO-NE Control Area unless such Generation Unit has entered into a Capacity Obligation in another Control Area before the start of the first available compliance year for the ISO-NE Forward Capacity Market, in which case this subsection shall apply upon the expiration of that Capacity Obligation. **The requirements of this paragraph do not apply to Generation Units for which DOER has received an administratively complete Statement of Qualification Application prior to July 2, 2008.**

Without such clarification, the "Capacity Obligation" provisions of the Emergency Regulations will be in conflict with the DOER Report. See DOER Report at 8 ("Allow all generators that have submitted an SQ application prior to July 2, 2008 to maintain the eligibility under the current rules without taking further action.").

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[3] HQUS further notes, that to the extent DOER intends to allow capacity commitment restrictions on intermittent resources that received an administratively complete SW prior to July 2, 2008, any such "commitment should be limited to that percentage of the generator's production for which the generator is seeking MA RECs." (DOER Report at 8, n.11.)

2. 225 CMR § 14.05(5)(d), As Currently Drafted, Fails To Provide Sufficient Information Concerning The Proposed Attestation, And Unfairly Discriminates Against External Generation Units

As currently drafted, 225 CMR § 14.05(5)(d) creates inequitable special attestation provisions only applicable to a Generation Unit located in a Control Area adjacent to the ISO-NE Control Area:

> The Generation Unit Owner or Operator must provide an attestation in a form to be provided by the Department that it will not itself or through any affiliate or other contracted party, engage in the process of importing RPS Class I Renewable Generation into the ISO-NE Control Area for the creation of RPS Class I Renewable GIS Certificates, and then exporting that energy or a similar quantity of other energy out of the ISO-NE Control Area during the same hour.

HQUS does not challenge the purpose and intent behind § 14.05(5)(d): "to prevent 'greenwashing' or 'roundtripping,' which is the process of importing renewable energy into ISO-NE to create RECs and then exporting that energy or similar amount of energy out of ISO-NE." (DOER Report at 8.) As DOER observed, "this practice amounts to gaming or bypassing the intended purpose of the RPS, and thereby eliminating the benefits associated with requiring that energy be imported into ISO-NE in order to earn a REC." (Id.) HQUS previously addressed the concern of "greenwashing" in its written comments and proposed self-certification as a potential solution. See Letter from Stephen Molodetz, Vice President of Business Development, HQUS, to Commissioner Philip Giudice, Commonwealth of Massachusetts, Department of Energy Resources, October 1, 2008, at 9-10, 12 (noting that the NERC tagging process already addresses "wheel through" concerns and proposing self-certification as an alternative).

The New England energy market includes nearly 300 participants who are buying and selling energy among themselves on an hourly, daily, weekly, monthly and annual basis. In addition to supplying renewable energy into the New England market, Massachusetts RPS program participants (including HQUS) also participate more broadly in the Northeast energy markets through energy trading between markets. Energy trading, a process in which a company buys energy in a lower cost market and delivers it to a higher cost market, is a common practice in the industry and a key component of efficient energy markets, as it contributes to the liquidity, reliability and economics of both markets. Parties that purchase energy in a lower cost region and export and sell it in a higher cost region on an hour-by-hour basis are contributing to the economic health of both regions. In fact, Massachusetts

RPS program participants face two distinct, independent business decisions: the decision to trade energy between markets (typically made by 24-hour trading desks) and the decision to import qualified energy to a market in order to receive RECs (typically made by long-term marketing groups).

Without the opportunity to review the specific language of the attestation, HQUS is concerned that the attestation could unintentionally interfere with legitimate inter-regional trading activities by requiring Massachusetts RPS program participants to attest that they are not trading energy from the New England market while they are importing renewable energy into New England.

Moreover, as currently drafted, § 14.05(5)(d) unfairly discriminates between internal and external generation units. The concepts of "greenwashing" and "roundtripping" can apply to internal generators just as well as generators outside of the ISO-NE Control Area. It is no more likely that an external generator could participate in either of these activities than an internal generator. The DOER recognized this potential inequity with regard to the capacity provisions and drafted emergency regulations for capacity to apply to both internal and external generators. The DOER should do the same for the final regulations as they relate to the required attestation.

a. The Proposed Final Regulations Should Contain More Substantive Information Concerning The Proposed Attestation

At this time, the proposed attestation form is not yet available; however, the text of the form is crucial to the specifics of this particular undertaking. Prior to promulgating the Proposed Final Regulations, HQUS would appreciate the opportunity to comment on the proposed language of the attestation form (or, if possible, the form itself) referenced in § 14.05(5)(d). The opportunity to review the attestation form prior to final promulgation would further enhance the rulemaking process and avoid future misunderstandings regarding the intent of RPS program participants.

Since the form is not available for review and comment at this time, HQUS respectfully submits that any proposed attestation form should include the following important concepts:

First, the attestation should include language addressing the concept of intent to circumvent the rules. (Indeed, the DOER Report included specific mechanisms for assessing the validity of such attestations. (DOER Report at 9-10.)) Incorporating intent into the attestation form would avoid classifying energy trading as "greenwashing" or "roundtripping" when, in fact, that energy trading is instead trading that occurs in the ordinary course of business.

Second, the phrase "that energy or a similar quantity of other energy" should be deleted from § 14.05(d). Deleting that phrase would also avoid interfering with the broader electricity market.

Third, further detail is also required regarding the calculation of the quantity of energy exported. As discussed earlier, in addition to importing up to 108 MW of MA RPS qualified renewable energy per hour, HQUS also imports up to 1800 MW per hour of HQ system energy into New England. Any attempt to classify an energy export as "greenwashing" or "roundtripping" without also considering energy imports during the same time period is only looking at half the equation.

b. Section 14.05(5)(d) Should Be Modified To Avoid Unfairly Discriminating Against External Generation Units

HQUS respectfully submits that § 14.05(5)(d) should also be modified in order to avoid unfairly discriminating against external generation units. Section 14.05(5)(d) should be modified so that it applies to both external and internal generation units. Such modifications of § 14.05(5)(d) would not only incorporate the inherent concepts of equity and fair play, but also avoid possible constitutional challenges to the regulations.[4] The issue of inequities between internal and external suppliers of renewable energy was raised during the DOER's solicitation of stakeholder comments in the fall of 2008. HQUS commends the DOER for addressing that issue in the proposed final regulations concerning capacity obligations. Section 14.05(5)(d), however, does not cure those inequities with regard to netting. As currently drafted, that section still only looks at half of the equation, and arbitrarily discriminates against importers rather than all RPS participants who export from the New England region.

In order to cure the inequities created by the language currently proposed for § 14.05(5)(d), HQUS proposes deleting that paragraph in its entirety. Instead, in order to ensure that the attestation requirement applies equally and equitably to both external and internal Generation Units, HQUS recommends adding

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[4] The constitutionality of regulations imposing requirements that treat external generation units differently than internal generation units was raised during the stakeholder forum and in written comments submitted to the DOER. HQUS understands that the DOER evaluated those arguments and concluded that such requirements would "not result[] in a clear violation of the Commerce Clause." (DOER Report at 2.) HQUS respects that conclusion as far as it goes, but reserves its rights to seek further administrative or judicial review if and as necessary.

a new paragraph to the section governing Eligibility Requirements, § 14.05(1), with the following language inserted into the regulations as a new proposed § 14.05(1)(f):

> The Generation Unit or Operator must provide an attestation in a form to be provided by the Department that it will not itself or through any affiliate or other contracted party, **intentionally circumvent the Massachusetts RPS rules by engaging in the process of "greenwashing" or "roundtripping" by** importing **or generating energy from an** RPS Class I Renewable Generation **Unit** into the ISO-NE Control Area for the creation of RPS Class I Renewable GIS Certificates **during a given hour**, and then exporting energy out of the ISO-NE Control Area during the same hour. **The quantity of energy exported will be calculated on a net basis after considering all imports and exports of a Generation Unit Owner or Operator or affiliate during that hour.**

* * *

In conclusion, HQUS appreciates the opportunity to provide these written comments on the Proposed Final Regulations in addition to its oral comments at the February 5, 2009 public hearing. HQUS also commends the DOER for their diligent efforts during the stakeholder comment and rulemaking process in order to foster and promote the development of and vibrant market for renewable generation in the Commonwealth of Massachusetts.

Respectfully submitted,

Stephen Molodetz
Vice President of Business Development
H.Q. Energy Services (U.S.) Inc.